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U.S. Citizenship and Immigration Services

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FEB 08 2007

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 05 091 50170

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as in the field of immunology research. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, the petitioner has not overcome the director's valid concerns.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Master's degree in Medicine from Tongji Medical University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, immunology, and that the proposed benefits of his work, improved understanding of vector-borne diseases such as Lyme disease, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

On appeal, counsel asserts that the denial of the petition "fails to be in consistent [sic] with the intent of Congress and the essence of immigration legislation that any person qualified to engage in a profession in the United States should, in and of itself, be the basis for exemption from the requirement of a job offer based on national interest, and cause a loss to U.S. leadership in the science and technology."

The classification set forth in section 203(b)(2) of the Act, including both aliens of exceptional ability and members of the professions with advanced degrees, requires, by statute, an alien employment certification. That requirement "may" be waived in the national interest. Counsel provides no legal authority, and we know of none, that suggests that Congress intended the national interest waiver as a blanket waiver for all members of the professions with an advanced degree. It is the position of Citizenship and Immigration Services (CIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner received his Bachelor of Medicine from Wuhan Medical College in 1984 and his Master's Degree of Medicine from Tongji Medical University in 1987. Line 15 of the Form ETA-750B requests all jobs in the past three years and "other jobs related to the occupation." The petitioner listed student research on Hirschsprung's disease, liver cirrhosis and portal hypertension from 1984 to 1987 and a "postdoctoral associate" position at Yale University from 2000 to the present. The petitioner listed no research experience between 1987 and 2000. The petitioner's supervisor at the time of filing, [redacted], asserts that in 2000 the petitioner came to Yale for one year of training in cardiovascular research before joining [redacted] laboratory. Thus, the record reveals that the petitioner had no experience in the area of proposed national benefit prior to 2001.

Moreover, the record is not clear regarding the petitioner's exact position with Yale prior to 2005. The petitioner claimed to have been working as a postdoctoral researcher at Yale since 2000. In response to the director's request for additional evidence, however, the petitioner submitted a job offer letter from Yale dated May 31, 2005. The offer is to "join" the faculty at Yale as an associate research scientist. The letter does not suggest that the offer is a reappointment or promotion.

[redacted], a professor of surgery at Children's Hospital of Jiangxi Province, asserts that his expertise is in pediatric surgery, "which was the clinical and research area of [the petitioner] in China." [redacted] however, asserts that his opinions are based on a review of the petitioner's curriculum vitae. He does not claim to have known of the petitioner's work prior to receiving a request for a letter in support of the petition. [redacted] asserts that the petitioner's method for diagnosing Hirschsprung's disease "is being used as a routine method." [redacted] however, does not assert that he personally uses this method or explain how he has first hand knowledge that others use this method. As stated above, [redacted] implies that his opinion is based on a review of the petitioner's own self-serving curriculum vitae.

In the early 1990's the petitioner received city and provincial recognition for his work on diagnosing Hirschsprung's disease. Government recognition for achievements is one of the criteria for aliens of exceptional ability, a classification that normally requires an alien employment certification. We cannot conclude that meeting one criterion, or even the requisite three criteria for that classification warrants a waiver of the alien employment certification requirement in the national interest. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 222.

On appeal, the petitioner submits a letter from [redacted], President of Guangzhou Children's Hospital. [redacted] asserts that he learned a new method for diagnosing Hirschsprung's disease from the petitioner and tested 100 suspected patients with this method in 2005. The petitioner also submitted evidence that his articles, published in China between 1988 and 2000, have been cited between one and five times. The petitioner has not demonstrated that this is a significant number for articles that have had a long time to accrue citations.

Even if we were to conclude that the petitioner's work in China was influential, the record fails to explain the relevance of this work to the petitioner's current work.

[redacted] asserts that the petitioner joined her laboratory to "continue his training." The petitioner focused on the role of the Toll-like receptor (TLR) on immune cells responding to *B. burgdorferi*, the spirochetes that cause Lyme disease. Previous studies had demonstrated that inflammation was induced through an interaction with a subgroup of TLRs. The petitioner "overturned the prevailing dogma" by demonstrating that acute arthritis and carditis characteristic of Lyme disease in mice arose independently of TLR-mediated pathogen recognition in mice deficient in a common intracellular adaptor molecule MyD88. The petitioner also demonstrated the importance of TLRs in control of the pathogen as TLR deficient mice have impaired degradation of spirochetes. Finally, the petitioner demonstrated that TLR deficient mice had a higher spirochete burden than control mice. [redacted] concluded that these results "may provide avenues to improve the diagnosis and treatment of patients with suspected or persistent Lyme disease."

The petitioner provided letters from colleagues at Yale, collaborators from other institutions and independent references. All of the letters provide similar information. The independent references

do not suggest that the petitioner has influenced their own research. As of the date of filing, the petitioner had published one article on Lyme disease and several much earlier articles in China. In response to the director's request for additional evidence, the petitioner submitted evidence that his article on Lyme disease had been cited five times by independent research teams, at least three of which predate the filing of the petition. The petitioner submitted an additional four citations of this work on appeal.

The record shows that the petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher publishing his work inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. At best, the petition was prematurely filed before the petitioner was able to demonstrate a track record of success with some degree of influence in the field of immunology. As of the date of filing, the petitioner had published a single article on this subject that had yet to be extensively cited.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.